



## Case Summaries April 21, 2023

Case summaries are prepared by court staff as a courtesy. They are not a substitute for the actual opinions.

### OPINIONS

#### CLASS ACTIONS

##### Class Certification

*Mosaic Baybrook One, L.P. v. Simien*, \_\_\_ S.W.3d \_\_\_, 2023 WL \_\_\_ (Tex. Apr. 21, 2023) [[19-0612](#), [21-0159](#)]

This case concerns whether the trial court conducted a sufficiently rigorous analysis and correctly understood the governing law before certifying a class under Texas Rule of Civil Procedure 42. Paul Simien sued the owners and managers of his apartment complex, alleging that Mosaic had violated various Public Utility Commission rules that govern how landlords may bill tenants for water and wastewater service and was therefore liable under section 13.505 of the Water Code. The trial court granted partial summary judgment on liability in Simien's favor, rejecting Mosaic's arguments that Simien lacked standing and that subsequent amendments to section 13.505 had deprived the trial court of subject-matter jurisdiction. The trial court also granted Simien's motion to certify a class of current and former Mosaic tenants who were also subject to the challenged billing practices. Mosaic requested and received permission to file an interlocutory appeal of the trial court's order granting partial summary judgment.

Mosaic filed an application for permission to appeal the partial summary judgment, which the court of appeals denied, as well as an interlocutory appeal of the class certification order. The court of appeals (1) declined to reach the merits of the trial court's rulings on summary judgment as part of its review of the propriety of class certification; and (2) rejected Mosaic's challenge to the trial court's compliance with Rule 42(c)(1)(D), concluding that the trial court's rulings on Mosaic's special exceptions and Simien's motion for summary judgment adequately addressed Mosaic's defenses.

Mosaic petitioned the Supreme Court for review in both cases. The Court granted the petitions and consolidated them for argument with *Mosaic Baybrook One, L.P. v. Cessor*, \_\_\_ S.W.3d \_\_\_, 2022 WL \_\_\_ (Tex. Apr. 21, 2023) [[21-0159](#)]. The Court affirmed the trial court's partial summary judgment and affirmed the court of appeals' judgment affirming the trial court's order certifying a class. After rejecting Mosaic's challenges to standing and subject-matter jurisdiction, the Court held that Mosaic failed to raise an issue of fact regarding whether it had a right to charge Simien the disputed fees because Mosaic conceded that it had bundled a water-related service fee with other fees unrelated to water or wastewater service that were not authorized under

his lease. The Court also rejected Mosaic's challenge to the trial court's failure to list the elements of Mosaic's limitations defense in its order certifying a class, holding that the trial court's temporal limitations on the class definition adequately accounted for the defense.

The dissent, authored by Justice Bland, would have reversed. In its view, the Water Code and its implementing rules require metered-water charges to be calculated and presented independently, not other charges. Because Simien's bills complied with this requirement, the dissent concluded that Simien failed to establish his sole claim of a Water Code violation as a matter of law.

## **CLASS ACTIONS**

### **Class Certification**

*Mosaic Baybrook One, L.P. v. Cessor*, \_\_\_ S.W.3d \_\_\_, 2023 WL \_\_\_ (Tex. Apr. 21, 2023) [[21-0161](#)]

This case concerns whether the trial court conducted a sufficiently rigorous analysis and correctly understood the governing law before certifying a class under Texas Rule of Civil Procedure 42. Tammy Cessor sued the owners and managers of her apartment complex, alleging that Mosaic had assessed fees for late payment of rent in violation of section 92.019 of the Texas Property Code. Cessor also filed a motion to certify a class of current and former Mosaic tenants who were also subject to the challenged late fees. Mosaic initially filed an answer that generally denied Cessor's claims. Mosaic later amended its answer three days prior to the hearing on class certification, raising several affirmative defenses for the first time and months after the deadline for amended pleadings had passed. The trial court granted Simien's motion to certify a class, and Mosaic filed an interlocutory appeal.

On appeal, Mosaic complained that the trial court did not conduct the requisite rigorous analysis under Rule 42, relying on the trial court's failure to definitively construe section 92.019 of the Property Code or address the affirmative defenses raised in Mosaic's late-filed answer. The court of appeals affirmed without addressing the parties' arguments about statutory construction, reasoning that courts should not decide the merits of a suit as a means of determining its maintainability as a class action. Mosaic petitioned the Supreme Court for review. The Court granted the petition and consolidated it for argument along with *Mosaic Baybrook One, L.P. v. Simien*, \_\_\_ S.W.3d \_\_\_, 2022 WL \_\_\_ (Tex. Apr. 21, 2023) [19-0612, 21-0159].

The Court rejected Mosaic's argument that the trial court had misconstrued or failed to construe section 92.019 but agreed with Mosaic that the trial court's failure to list the elements of or otherwise address Mosaic's late-asserted answers constituted reversible error. Because Cessor did not object to the amended pleading, the trial court had no discretion under Texas Rule of Civil Procedure 63 to refuse to consider the defenses. The Court therefore reversed the court of appeals' judgment affirming the trial court's order certifying a class under Rule 42 and remanded the case to the trial court for further proceedings.

## OIL AND GAS

### Force Majeure

*Point Energy Partners Permian LLC v. MRC Permian Co.*, \_\_\_ S.W.3d \_\_\_, 2023 WL \_\_\_ (Tex. Apr. 21, 2023) [[21-0461](#)]

In this permissive interlocutory appeal, the central issue is whether a force majeure clause was properly invoked when the operation allegedly delayed by the force majeure had been untimely scheduled to begin after the lease deadline.

To suspend termination of its oil-and-gas lease at the end of the primary term, MRC had to commence drilling a new well by a certain date. But MRC mistakenly scheduled the drilling to begin three weeks after that deadline. MRC discovered its mistake after the deadline passed and invoked its lease's force majeure clause. The clause provided that "[w]hen Lessee's operations are delayed by an event of force majeure," the lease shall remain in force during the delay with ninety days to resume operations. In a notice to the lessors, MRC alleged that a month before the deadline, a wellbore instability on an unrelated lease set back its rig's schedule for drilling on other leases—including the untimely scheduled operation—by thirty hours. Point Energy responded that it had taken the lease from the lessors after the deadline had passed and challenged MRC's continued leasehold interests.

MRC sued Point Energy for tortious interference with its lease and declaratory relief that it properly invoked the force majeure clause. Point Energy counterclaimed for declaratory relief that MRC's lease terminated and that MRC's retained interests in production units for wells it had drilled during the primary term were limited in size to the smaller of two options described by the lease. On cross-motions for partial summary judgment, the trial court ordered that MRC's lease terminated, Point Energy did not establish the production-unit size as a matter of law, and MRC take nothing on its tortious-interference claims. The court of appeals reversed the declaratory judgment that the lease terminated, concluded that the question of the production-unit size was unripe for decision, reversed the take-nothing summary judgment on the tortious-interference claim, and remanded the case.

The Supreme Court held that, construed in context, "Lessee's operations are delayed by an event of force majeure" does not refer to the delay of a necessary drilling operation that had been scheduled to commence after the deadline for perpetuating the lease. Accordingly, the Court reversed the court of appeals' judgment on the force majeure and tortious-interference issues, rendered judgment that the force majeure clause did not save the lease as a matter of law, rendered a take-nothing judgment in part on MRC's tortious-interference claims to the extent they are predicated on the force majeure clause saving the lease, and remanded the case to the court of appeals to consider two issues preserved but not reached: the size of MRC's retained production units and whether the evidence raised a fact issue on MRC's tortious-interference claims regarding any leasehold interest in the retained production units.

## CLASS ACTIONS

### Class Certification

*Am. Campus Cmty's., Inc. v. Berry*, \_\_\_ S.W.3d \_\_\_, 2023 WL \_\_\_ (Tex. April 21, 2023) [[21-0874](#)]

The issue in this case is whether a court may properly certify a class under Texas Rule of Civil Procedure 42 when the proposed class claim is facially defective as a matter of law. Former tenants sued American Campus alleging that it had omitted required

language from their leases. Section 92.056(g) of the Texas Property Code requires that leases contain bold or underlined language informing tenants of the remedies available when a landlord fails to repair or remedy conditions that materially affect the tenant's physical health or safety.

The class sought is not made up of individuals who alleged American Campus deficiently repaired their particular apartments. Rather, the class sought certification on a theory that the omission of the required lease language alone entitled each class member to recover statutory damages, penalties, and attorney's fees. The trial court denied American Campus's summary judgment motion and certified the class of tenants. The court of appeals affirmed the class certification. American Campus petitioned the Court for review, and the Court granted the petition.

The Court held that the class certification was improper because the tenant's claim had no basis in law, and, therefore, the rigorous analysis required by Rule 42 could not meaningfully be performed. The Court reversed the court of appeals' judgment and the district court's order certifying a class and remanded the case to the district court for further proceedings consistent with its opinion.

## **MUNICIPAL LAW**

### **State Law Preemption**

*Hotze v. Turner*, \_\_\_ S.W.3d \_\_\_, 2023 WL \_\_\_ (Tex. Apr. 21, 2023) [[21-1037](#)]

The issue in this case is whether one proposed city charter amendment may impose a higher vote threshold for adoption on another proposed city charter amendment when both win a majority of votes at the same election.

A group of citizens submitted a proposed city charter amendment, Proposition 2, that would impose a strict voter-approval requirement before the City of Houston could increase tax revenues. The Houston City Council responded with its own proposed amendment, Proposition 1, that would require a more lenient voter-approval threshold; it also included a primacy clause that would require Proposition 1 to prevail over another majority-winning amendment "relating to limitations on increases in City revenues" if Proposition 1 passed with a higher number of votes. A majority of voters approved both propositions at the same election, but Proposition 1 earned more votes than Proposition 2.

The City declined to comply with Proposition 2, claiming that Proposition 1's primacy clause prevented its enforcement and, moreover, that the City Charter's reconciliation provision required such a result when two adopted amendments conflict. Bruce Hotze sued for enforcement, arguing that the primacy clause and the reconciliation provision violated a state law that provides for the adoption of a proposed charter amendment if it passes by a majority of votes. The trial court ruled that the primacy clause defeated Proposition 2. A divided court of appeals affirmed, holding that the state-law requirement that a majority-approved amendment must be adopted does not also require that the amendment be enforced.

The Supreme Court reversed, holding that the primacy clause improperly imposed a higher vote threshold than state law permits and that the City had no discretion to refuse to enforce a charter amendment after its approval and adoption. The Court observed, however, that state law does not address the unusual situation in which conflicting amendments pass simultaneously, and it remanded the case to the trial court to consider whether the City Charter's reconciliation provision governs the two amendments.

## EVIDENCE

### Medical Expense Affidavits

*In re Chefs' Produce of Hous., Inc.*, \_\_\_ S.W.3d \_\_\_, 2023 WL \_\_\_ (Tex. Apr. 21, 2023) (per curiam) [[22-0286](#)]

The issue in this mandamus proceeding is whether the trial court abused its discretion by striking Chefs' Produce's medical expense counteraffidavit and prohibiting the counteraffiant from testifying at trial.

Antonio Estrada was injured in a car accident with Mario Rangel, who was driving a box truck for his employer, Chefs' Produce. Estrada sued both Rangel and Chefs' Produce claiming that Rangel's negligence caused the wreck.

Estrada timely filed an affidavit under Section 18.001 of the Civil Practice and Remedies Code averring that he had incurred reasonable and necessary medical expenses because of the accident. Chefs' Produce timely filed a counteraffidavit under Section 18.001(f) challenging Estrada's expenses. Chefs' Produce retained an anesthesiologist and pain management doctor as the counteraffiant.

Estrada moved to strike the counteraffidavit and testimony. The trial court granted the motion to strike and precluded the counteraffiant from testifying at trial. Chefs' Produce moved for reconsideration shortly after the Supreme Court issued its opinion in *In re Allstate Indemnity Insurance Co.*, 622 S.W.3d 870 (Tex. 2021), arguing that that opinion established that the trial court improperly struck the counteraffidavit. The trial court denied the motion for reconsideration. Chefs' Produce sought mandamus relief in the court of appeals, and a divided court denied relief.

The Supreme Court conditionally granted Chefs' Produce's petition for writ of mandamus and ordered the trial court to vacate its order striking the counteraffidavit and testimony. The Court held that the counteraffidavit satisfied all of Section 18.001(f)'s requirements and provided Estrada with reasonable notice of Chefs' Produce's basis for controverting the initial affidavit's claims. The Court further held that the mere inclusion of a causation opinion in an otherwise compliant Section 18.001(f) counteraffidavit is not a proper basis for striking it. Finally, the Court held that Chefs' Produce lacked an adequate appellate remedy because, given the procedural posture of the case, the trial court's improper order effectively foreclosed Chefs' Produce from presenting rebuttal testimony on the reasonableness and necessity of Estrada's medical expenses.